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Subject: OCSPP News for May 18, 2021

OCSPP Daily News Round-Up

General EPA

- Bloomberg Law 05/17; [Regan Tells EPA Employees to Continue Working From Home](#)
- E&E News 05/18; [Regan to EPA staffers: No timeline set for return to office](#)

Toxics

- Bloomberg Law 05/17; [PFAS Uses Are Limited, Easily Managed, Industry Study Says \(1\)](#)
- Bloomberg Law 05/18; [Health Groups Sue EPA to Force Deadline for Asbestos Analysis](#)
- E&E News 05/18; [Lawsuit aims to force EPA to address legacy asbestos uses](#)
- Inside EPA 05/18; [Utilities, Environmentalists Press EPA To Expand PFAS Effluent Study](#)
- Inside TSCA 05/17; [Birnbuam Warns EPA Faces 'Difficult' Analyses To Achieve TSCA EJ Goals](#)
- Inside TSCA 05/17; [Voluntary 'PFAS-Free' Certification Program Draws Industry Opposition](#)
- Inside TSCA 05/17; [Anti-PFAS Groups Tout Study Of Maternal Transmission In Bid For Bans](#)
- Medical Design & Outsourcing 05/18; [Medline, Sterigenics failed to report EtO emissions to EPA, report says](#)
- WaterWorld 05/17; [EPA, others announce winners of PFAS elimination challenge](#)

Pesticides

- Bloomberg Law 05/18; [Plaintiffs' Lawyer in Roundup Cases Shifts to Syngenta Herbicide](#)
- U.S. Right to Know 05/17; [Key Court Hearing Wednesday in Bayer Cancer Liability Litigation](#)

Blog/OpEd/Other

- Bergeson & Campbell Blogs 05/17; [EPA Will Rescind Final Rule Establishing Administrative Procedures for Issuing Guidance Documents](#)
- Bergeson & Campbell Blogs 05/18; [EPA Begins Environmental Justice Consultations on Risk Management Rulemakings for Trichloroethylene and Perchloroethylene](#)
- Bloomberg Law 05/17; [A Breath of Fresh Air at the EPA, But Budget, Staff Need Boost](#)
- Foley Hoag LLP 05/13; [I May Agree With This EPA On Most Issues, But I Still Don't Like Guidance](#)

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Regan Tells EPA Employees to Continue Working From Home

Stephen Lee, Bloomberg Law

<https://news.bloomberglaw.com/environment-and-energy/regan-tells-epa-employees-to-continue-working-from-home?context=search&index=14>

The EPA will continue to maximize employee telecommuting even as the U.S. starts opening up from the pandemic, Administrator Michael Regan told staff on Monday.

The Environmental Protection Agency has “no specific dates or timelines for when employees could be returning to the office” and will give workers an “ample transition period” to come back, Regan wrote in an internal email, which was reviewed by Bloomberg Law. He asked employees to tell him about any flexibility they’ll need once the pandemic is over.

EPA staff received an email Friday announcing that fully vaccinated employees, contractors, and visitors to agency facilities no longer must wear masks or maintain social distancing.

Andrea Medici, an EPA attorney and chief steward of National Treasury Employees Union Chapter 280, said that announcement “came as a big surprise to us.” She said the union doesn’t understand why the agency “took this step unilaterally when we have just created a labor-management coalition to cooperate on pandemic-related issues.” The union also is concerned that the EPA will no longer require documentation verifying proof of vaccination, Medici said.

In establishing the new policy, the agency said it was following Centers for Disease Control guidance and not local requirements.

To contact the reporter on this story: Stephen Lee in Washington at stephenlee@bloombergindustry.com

Regan to EPA staffers: No timeline set for return to office

Kevin Bogardus, E&E News

https://www.eenews.net/greenwire/2021/05/18/stories/1063732867?utm_campaign=edition&utm_medium=email&utm_source=eenews%3Agreenwire

EPA Administrator Michael Regan told agency employees that there are no dates set yet for when staff will return to the office and that he wants to hear from EPA employees on what their post-pandemic work life should look like.

Regan's internal email obtained by E&E News comes as infections decline and the country begins to fully reopen.

Noting the EPA staff's health is "our top priority," Regan said, "I want to reassure you that we will continue to maximize the use of telework as a part of our response to the COVID-19 pandemic."

Regan's message, sent yesterday, comes after agency staff were told on Friday masks would no longer be required for fully vaccinated people in EPA facilities (Greenwire, May 17).

The Office of Management and Budget has told federal agencies to drop the mask mandate for their offices, which is consistent with CDC guidance announced last week. Since then, there have been a wave of announcements by businesses as well as local and state governments loosening their own mask policies.

Some EPA employees are worried about the change in masking requirements over potential exposure to the virus. They also believe no longer requiring masks means EPA edged closer to a staff recall to the office.

Regan said in his email he understood staff have questions about EPA's plans during the remainder of the pandemic.

"At this time, I can share with you that we currently have no specific dates or timelines for when employees could begin returning to the office," Regan said, adding EPA will have "an ample transition period" when it is safe for more employees to return to the workplace.

Most agency staff have been teleworking since March 2020. Last year, Trump EPA leadership launched a phased reopening plan, which unnerved employees over a possible recall to the office within weeks, but that approach was abandoned by the Biden administration (Greenwire, April 23).

EPA has begun to contemplate what agency operations should look like after the pandemic. In his email, Regan said he wanted to hear from staff on what they will need in that future.

"As we start to plan out what work post-COVID-19 will look like, I want to understand what you think our post-reentry human resource policies and work environment should be, and how we can improve workplace safety, satisfaction, and efficiency in the future by learning from these recent experiences," Regan said. "I would like to hear about any flexibilities you will continue to need, or feel are appropriate for the future of EPA's work."

The EPA administrator said employees will receive a link to an anonymous survey in the near future to express their views and concerns. Also, each program and regional office will hold listening sessions with staff starting this week and the agency will be talking with unions and "key external stakeholders" to better understand how remote EPA operations affected them.

Regan said staff's feedback will inform EPA's input to OMB to help with "the development of post-COVID policies and help inform EPA's future work environment."

"Thank you for your time and thoughtful responses," Regan concluded his email.

PFAS Uses Are Limited, Easily Managed, Industry Study Says (1)

Pat Rizzuto, Bloomberg Law

https://news.bloomberglaw.com/environment-and-energy/pfas-uses-are-limited-easily-managed-industry-study-says?usertype=External&bwid=00000179-762b-da51-a1fb-773f69310001&qid=7109756&cti=FGOV&uc=1320000080&et=NEWSLETTER&emc=neve_nl%3A14&source=newsletter&item=headline%ion=digest&access-ticket=eyJjdHh0IjoITkVWRSlslmlkljoiMDAwMDAxNzktNzYyYi1kYTUxLWExZmltNzczZjY5MzEwMDAxliwic2lnljoicDIBK2JSZ3YxYUhhMmMxIdjB2MmFvTONXWIFnPSlslRpbWUOIiXNjlxMzM2NTU5liwidXVpZCI6IkILV1ZrRzRIOGhzNXVQTkY4RGIGa2c9PTJscHBhckSYSWRFbjZrZjR4UlgzTkE9PSlslYiOIiXIn0%3D

The number of PFAS that companies make and use is far smaller and more easily managed than people claim, according to a study from three chemical makers that seek to influence lawmakers and regulators developing PFAS policies.

The paper, written by scientists at AGC Chemicals Americas, Inc., the Chemours Co., and Daikin America, Inc. said they produce 256 commercially-relevant per- and polyfluoroalkyl substances, or PFAS. That's less than 6% of the 4,730 PFAS listed by Organization for Economic Cooperation and Development, or OECD.

The study, released May 14, counters false information affecting U.S. and global policies, according to Jay West, a senior director at the American Chemistry Council trade association.

The study's findings should be useful to PFAS producers, manufacturers that use the chemicals and the lawyers, consultants, and lobbyists who work with such companies, he said.

'Rational, Informed Approach'

Activists, aided by some scientists and legislators, have pushed for all PFAS to be lumped together as the number of them on the market is too overwhelming to regulate them individually, West said.

For example, they've suggested that the 4,730 PFAS in OECD's global database is "unmanageable" for regulatory risk assessment and justifies the "regulate all PFAS" approach, under consideration in the European Union, according to the chemical makers' study published in Integrated Environmental Assessment and Management.

The paper offers what PFAS manufacturers "believe is a more rational and informed approach" that the American Chemistry Council plans to offer lawmakers and regulators, West said.

Local, state, federal, and global regulators are stepping up efforts to control PFAS, some of which don't break down in the environment. Some also have been linked to health problems ranging from higher cholesterol to cancer, according to the Center for Disease Control and Prevention.

The study doesn't address PFAS outside of the 256, nor the PFAS that are no longer produced but remain in the environment, said Bob Buck, a technical fellow at Chemours and the study's lead author. Nor does it claim these are the only PFAS being produced and used. Instead it challenges other PFAS producers to provide similar information.

'What We Make and Sell'

But the study offers the first detailed examination of "what we make and sell," Buck said. It defines "commercially relevant" as being on OECD's list and "present in a commercial product offered for sale." The definition includes chemicals used to make the PFAS, impurities, and chemicals into which the PFAS degrade.

Commercially-relevant PFAS numbers are in the hundreds not thousands, and these can be grouped into five categories based on chemical properties and characteristics and dealt with based on their risks, Buck said.

Risk-based regulations evaluate one or more chemicals' potential to harm and the amount of exposure to they pose. Hazard-based regulations control chemicals based on their potential to harm irrespective of exposure levels.

The information and grouping strategy the paper provides can show regulators that "tried and true" risk assessment methods are useful to help them decide when regulations are warranted and how to craft controls, West said.

One 'Class' of Chemicals

But the Environmental Working Group, which has long focused attention to health concerns about PFAS, objected to that strategy.

"Whether there are hundreds or thousands being manufactured, PFAS should be considered as a class of chemicals when evaluating potential health effects and passing regulation," EWG senior scientist David Andrews said.

An important takeaway from this study is that little public information is available on what PFAS chemicals are added to products and in which amounts they are used commercially, he said.

Understanding the full scope of PFAS contamination is nearly impossible when there is a significant lack of transparency surrounding the use, release and disposal of...

Health Groups Sue EPA to Force Deadline for Asbestos Analysis

Pat Rizzuto, Bloomberg Law

https://news.bloomberglaw.com/environment-and-energy/health-groups-sue-epa-to-force-deadline-for-asbestos-analysis?utm_source=twitter&utm_medium=ehsdesk&utm_campaign=984A37D0-B815-11EB-9BB6-451C50017A06

The EPA has failed to fully analyze the health risks posed by asbestos, a coalition of health groups alleged Tuesday in asking a federal court to set a deadline for the work.

Asbestos analyses performed so far have fallen short of the Environmental Protection Agency's duty to determine asbestos risks under the Toxic Substances Control Act, or TSCA, six health and environmental groups and five health care providers said in a complaint.

"The court must issue an order setting a deadline for carrying out this duty," the groups said in their petition filed in the U.S. District Court for the Northern District of California at San Francisco.

Asbestos is one of the first 10 chemicals that the EPA evaluated due to requirements in the 2016 TSCA amendments.

The agency in January released a partial analysis of a few ongoing uses of chrysotile, a type of asbestos, finding workers faced unreasonable risk. The agency has begun developing regulations to reduce potential harms.

A second analysis of discontinued uses of more types of asbestos is in the works, because the U.S. Court of Appeals for the Ninth Circuit's ruled in 2019 that the EPA violated TSCA by categorically excluding discontinued, or legacy, uses of chemicals from its risk evaluations.

Yet maintenance workers, teachers, and school-aged children in millions of structures across the U.S. face health threats from exposure to asbestos that remains in attic insulation, pipes, boilers, floor tiles, and a host of other products, the health groups told the court.

Cause of Action: Toxic Substances Control Act

Relief: Declaratory and injunctive relief

Response: "Because this is pending litigation, EPA has no additional information to share," an agency spokesperson said.

Attorneys: Sussman & Associates and Lozeau Drury LLP are representing the plaintiffs.

The case is: Asbestos Disease Awareness Org. v. Regan, N.D. Cal., No. 21-03716, complaint filed 5/18/21

Lawsuit aims to force EPA to address legacy asbestos uses

E.A. Crunden, E&E News

https://www.eenews.net/greenwire/2021/05/18/stories/1063732863?utm_campaign=edition&utm_medium=email&utm_source=eenews%3Agreenwire

A coalition of groups is suing EPA over its assessment of the dangers posed by asbestos, a move that comes amid a wave of escalating criticism over other chemical evaluations.

The Asbestos Disease Awareness Organization and 11 other groups and asbestos experts announced the lawsuit today, shared exclusively with E&E News. Filed in the U.S. District Court for the Northern District of California, the new legal action seeks primarily to force EPA's hand on addressing legacy uses of asbestos.

Many industries have phased out asbestos, but the naturally occurring group of minerals persists — in so-called legacy uses — across the United States due to their prior use in everything from cars to buildings (Greenwire, March 12).

Advocates have increasingly pointed to the dangers lingering asbestos poses for workers and low-income communities of color.

"Despite the voluntary elimination of many asbestos products, the death toll from asbestos exposure remains high and is increasing," the groups state, noting that "the incidence of asbestos-related disease is elevated in populations with exposure to legacy asbestos."

They also argue that failure to crack down on asbestos in the past has made it the "poster child" for regulatory inaction on toxic substances.

The lawsuit comes after a Jan. 26 letter to EPA in which the organizations indicated their intent to sue under the Toxic Substances Control Act. Their main goal is to compel consideration of legacy asbestos uses, something that was not included in EPA's final risk evaluation.

That evaluation — one of the first 10 completed since TSCA was overhauled in 2016 — has been mired in controversy and allegations of industry interference. Legacy uses have been among the major contentions, as the Trump administration initially did not examine those sources of exposure.

In a November 2019 ruling, the 9th U.S. Circuit Court of Appeals ruled that excluding legacy uses from EPA's risk evaluation violated TSCA. The Trump administration ultimately released its asbestos evaluation as a "part one" assessment, with a second component set to follow. But advocates say EPA has dragged its feet on issuing that follow-up, a sluggish pace they say flies in defiance of the agency's obligations under TSCA.

"The Biden EPA has a lot of lost ground to recover on asbestos, and [Administrator Michael Regan] and the White House have recognized that asbestos must be a high priority," said Robert Sussman, counsel for ADAO and a former EPA official. "As the TSCA program transitions to a greater emphasis on public health protection, legacy asbestos should be a natural fit, and we expect EPA to set the wheels in motion without delay."

The asbestos risk evaluation is not the only TSCA assessment under fire from advocates. A number of organizations and public health experts have called on EPA to redo the first 10 assessments. Michal Freedhoff, President Biden's pick to lead the agency's chemicals office, has said the asbestos evaluation is among those under scrutiny but has not committed to a do-over (E&E Daily, May 13).

Advocacy groups are hoping that escalating pressure on EPA will lead to a ban on asbestos imports in addition to a consideration of legacy uses. They are also pushing for nationwide mapping to determine asbestos-contaminated locations.

A spokesperson for EPA said the agency does not comment on pending litigation.

Environmental justice concerns

The Biden EPA has said equity and transparency will be priorities for the agency, giving hope to anti-asbestos activists who say their fight fits well within that ethos.

ADAO CEO and President Linda Reinstein said in an interview that the government's failure to act on carcinogens like asbestos has led to an "erosion of trust" between regulators and the public.

That dynamic is worse for environmental justice communities, she said, given that low-income people of color are disproportionately affected by chemical exposure, in addition to suffering...

Utilities, Environmentalists Press EPA To Expand PFAS Effluent Study

Lara Beaven, Inside EPA

https://insideepa.com/daily-news/utilities-environmentalists-press-epa-expand-pfas-effluent-study?utm_source=dlvr.it&utm_medium=twitter

Drinking water utilities and dozens of environmental groups are urging EPA to look beyond the chemical manufacturing sector when collecting discharge data that could lead to Clean Water Act (CWA) regulation of per- and polyfluoroalkyl substances (PFAS), noting several other industrial sectors use large amounts of PFAS.

The central question EPA is pursuing in a recent advance notice of proposed rulemaking (ANPRM) is to identify industrial sources that may warrant further study for potential regulation of PFAS through national effluent limitation guidelines (ELGs).

But the “current effort, as pursued by the Agency, is not adequate to meet this goal,” the American Water Works Association (AWWA), which represents a variety of drinking water utilities, tells EPA in May 17 comments, urging consideration of PFAS uses by a host of other sectors including textile production and pulp and paper manufacturers.

And the Southern Environmental Law Center (SELC), representing 36 national and regional environmental groups, also urges the agency to take additional steps. SELC says in May 14 comments that quick action “is essential because PFAS contamination is widespread, harming communities throughout our country; companies responsible for releasing PFAS extend far beyond the ‘Organic Chemicals, Plastics and Synthetic Fibers Point Source Category;’ and effluent limitations guidelines can take years to finalize.”

EPA took comment until May 17 on the ANPRM, which asked more than two dozen questions the agency said could help it craft and target an ELG for facilities that work with PFAS, either deliberately or as a byproduct of other processes. The agency said it planned to focus on possible amendments to an existing ELG for the “Organic Chemicals, Plastics and Synthetic Fibers” (OCPSF) sector.

AWWA says the ANPRM could lead to an ELG that would protect sources of drinking water, but only if EPA takes more action. For example, the utilities say EPA should be collecting data now to inform ELG development beyond the OCPSF point source category with a focus on known major industrial users of PFAS; more effectively coordinate data collection under several environmental statutes; and utilize the agency’s CWA authority to require data submission on PFAS chemical use and process descriptions that describe the mass-balance and fate of PFAS.

Additionally, AWWA says, EPA should immediately collect data on PFAS use broadly so that when toxicology information becomes available later it will have the information necessary to move forward in a timely manner on that subset of PFAS, rather than collecting data only on those PFAS for which there are observed concentrations in wastewater effluent using available analytical methods.

The Trump EPA announced in the agency’s latest ELG plan, finalized in January, that it planned to issue the ANPRM, but the agency received input during the comment period on the ELG plan that a broader analytical framework than that which is reflected in the ANPRM is needed, AWWA says.

“EPA ignored public comments citing this concern and proceeded on with the current approach focusing on one industrial sector and an ad hoc voluntary survey/data collection activity focused on observed PFAS effluent loadings,” AWWA says. “This decision to not request data relevant to all industrial PFAS sources stymies the impact of the future ELGs,” and the decision should be revisited in line with President Joe Biden’s Executive Order 13990, which directs the heads of federal agencies to immediately review actions from the Trump administration that may be inconsistent with the Biden administration’s public health and environmental goals, the group says.

AWWA’s Concerns

AWWA says it is concerned with EPA’s current approach because at the pace at which EPA develops and revisits ELGs, the current ANPRM is too narrowly constructed to afford drinking water supplies the protection that is needed.

“It is both arbitrary, capricious, and unfair for...

Birnbaum Warns EPA Faces 'Difficult' Analyses To Achieve TSCA EJ Goals

Maria Hegstad, Inside TSCA

<https://insideepa.com/tsca-news/birnbaum-warns-epa-faces-difficult-analyses-achieve-tsca-ej-goals>

As EPA eyes steps under TSCA to assess risks to “fenceline” communities facing a wide variety of chemical releases, the former director of the National Institute of Environmental Health Sciences (NIEHS), says analysis of chemical mixtures, potentially a key component of that work, will be “very difficult” for regulators to achieve.

“I think mixtures are very difficult. You know, we've begun to deal with mixtures of chemicals that either have a common mechanism of action or that target a specific apical effect,” Linda Birnbaum, a former EPA scientist who led NIEHS and its National Toxicology Program until her retirement in 2019, said on the first episode of the Society of Toxicology’s new podcast, Adverse Reactions.

“But then when you start saying, but wait a minute, we just don't have dioxins. We just don't have [polychlorinated biphenyls (PCBs)]. We've got them with [polycyclic aromatic hydrocarbons (PAHs)], and we've got chromium around, too. I mean, maybe we've got chlorpyrifos, and how do you deal with that? And the answer is we haven't really worked out how to approach that.”

Those concerns could be crucial to the Biden EPA’s Toxic Substances Control Act (TSCA) agenda, as officials have recently pledged to take a fresh look at the risks chemical releases pose to exposed communities -- which in turn could require them to consider how separate chemicals interact when released into the same area, and the cumulative impacts they create.

The agency took its most explicit step on the subject May 13, when it asked the U.S. Court of Appeals for the 9th Circuit to remand its Trump-era TSCA evaluation of methylene chloride. In that filing, Michal Freedhoff -- the top official in the chemicals office and nominee to be its assistant administrator -- outlined ways in which she plans to make the evaluation broader and more cumulative, including by assessing risks to fenceline communities.

Freedhoff defined fenceline communities as those within 100-1,000 meters from emitting sources. These communities are often also environmental justice (EJ) communities of low-income residents of color who face exposures from multiple sources of toxic chemicals as well as ambient air and water pollution, such as from traffic emissions, as well as other risk factors that affect their overall health.

Those factors often overlap with the adverse effects of poverty and systemic racism, such as limited health care access, poor quality schools, violence and substandard housing, leading to a complex challenge for regulators tasked with protecting residents of those communities from environmental and other harms.

“The Agency intends to consider whether to include certain potentially exposed or susceptible subpopulations . . . as well as whether to conduct additional analyses for certain excluded environmental exposure pathways... For example, EPA may decide it is appropriate to conduct screening-level analyses of exposures to fenceline communities, which EPA may decide to consider a potentially exposed or susceptible subpopulation, from environmental pathways previously excluded from the risk evaluation (e.g., ambient air),” reads Freedhoff’s “declaration” to the 9th Circuit.

“Depending on the outcome of the screening-level analyses, EPA may conclude that it is appropriate to supplement the risk evaluation and/or account for any identified unreasonable risk in the risk management rulemaking,” she concluded.

That challenge has emerged as a key priority for Democrats and the Biden administration, which has sought to make EJ a top priority across the government and in EPA’s programs specifically.

‘Even If It’s Not Perfect’

But Birnbaum said in her new interview that prior efforts at evaluating risks from chemical mixtures have generally

looked at substances that have the same biological mechanism, or result in the same health effect, which risks that can be analyzed “with some kind of dose addition or concentration addition or relative potency...”

Voluntary ‘PFAS-Free’ Certification Program Draws Industry Opposition

Diana DiGangi, Inside TSCA

<https://insideepa.com/tsca-news/voluntary-pfas-free-certification-program-draws-industry-opposition>

A non-profit group’s environmental safety standard for certifying that consumer products are free of per- and polyfluoroalkyl substances (PFAS) is drawing criticism from the American Chemistry Council (ACC) as a step toward the “class-based” approach to PFAS regulation that industry broadly opposes.

In a recent interview with Inside TSCA, Shari Franjevic, program manager on the chemical-safety certification nonprofit GreenScreen For Safer Chemicals, said the group’s work reflects efforts to adopt the precautionary principle -- the idea that potentially unsafe chemicals should be limited or eliminated even in the face of scientific uncertainty about their risks -- even if only on a voluntary basis.

“I think that we have seen, over the last 30-plus years in this country, a failure of the risk paradigm,” Franjevic said. “The idea is that we can control the propensity to cause harm by controlling exposure, and the reality is exposure controls can and do fail, people use chemicals and products in unintended ways.”

In particular, she said, transparency on product ingredients is key to efforts to ensuring that individuals can make “informed decisions” on the products they buy even without more stringent risk rules from states or EPA.

“What’s happening right now in the marketplace is that companies have no requirement to disclose up and down the supply chain, the actual chemicals that are in their ingredients that become products. So downstream users of chemicals, retailers, etc., actually can’t make informed decisions, because there’s lack of transparency.”

GreenScreen -- a creation of the sustainable-chemistry consulting group Clean Production Action -- creates standards that certify consumer products like furniture, fabrics, firefighting foam and textile chemicals as free of chemicals of concern, including PFAS as well as phthalates and bisphenols, among others.

That model represents an alternative to environmental groups’ push for EPA to ban or sharply restrict those chemicals under the Toxic Substances Control Act (TSCA), as it relies instead on voluntary action by industry with third-party certification to verify that companies are following through on their commitments.

For instance, Clean Production Action in a recent release touted widespread adoption of its standards by companies that make firefighting foam and textile chemicals, writing, “Formulators are changing their products to meet GreenScreen Certified requirements with preferred chemistry. Over 240 textile chemical and firefighting foam products from manufacturers in North America, Europe, and Asia are now GreenScreen Certified.”

And it specifically highlighted efforts to apply those standards to PFAS. “The urgency of eliminating PFAS drives us to work with colleagues and experts in governments, academia, businesses, and [non-governmental organizations] to identify PFAS-free and preferred products with GreenScreen Certified,” the firm said.

But ACC, which represents chemical companies and has sharply opposed calls for states or EPA to adopt a “class-based” approach to PFAS and other substances where regulators set limits on an entire category of chemicals rather than specific substances, is arguing against use of even the voluntary measure because it relies on the class approach.

In a statement to Inside TSCA, the trade group for chemical companies says the decision to treat PFAS as a class for certification purposes is a “misguided measure” that “threatens sound science and the interests of consumers.”

‘Neither Scientifically Accurate, Nor Appropriate’

ACC Senior Director of Product Communications Sarah Scruggs described GreenScreen’s model as “A one-size-fits-all approach to chemical regulation is neither scientifically accurate, nor appropriate,” because certifying a product as free of any of the group’s chemicals of concern requires eliminating all substances in the class rather than only those with known toxicity.

“Each of these wide categories of...

Anti-PFAS Groups Tout Study Of Maternal Transmission In Bid For Bans

Diana DiGangi, Inside TSCA

<https://insideepa.com/tsc-news/anti-pfas-groups-tout-study-maternal-transmission-bid-bans>

Environmental groups are touting a new study that found per- and polyfluoroalkyl substances (PFAS) in breast milk samples from “50 out of 50” subjects as evidence of the chemicals’ wide-ranging contamination, with the director of one of the sponsor groups calling it “one more reason” for a TSCA ban on all but “critical” uses.

The study, published May 13 in the journal Environmental Science & Technology, is titled “Per- and Polyfluoroalkyl Substances (PFAS) in Breast Milk: Concerning Trends for Current-Use PFAS,” and describes itself as the “first study in the last 15 years” to analyze PFAS contamination in maternal breast milk in the United States.

And the abstract says the researchers’ findings “indicate that both legacy and current-use PFAS now contaminate breast milk, exposing nursing infants” -- a conclusion environmental groups that sponsored the study are already citing as evidence of the need for strict limits on PFAS under the Toxic Substances Control Act (TSCA) or other state or federal authorities.

The study was led by scientists from Toxic-Free Future (TFF), Indiana University, the University of Washington, and the Seattle Children’s Research Institute.

“It is significant -- infants are exposed to what their mother is exposed to,” Liz Hitchcock, director of Safer Chemicals, Healthy Families (SCHF), a coalition that includes TFF, told Inside TSCA. “When they’re in the womb, they’re exposed, and once they’re born, with breastmilk. This is something we should be concerned about because we are being exposed, we are exposing our children, to persistent, bioaccumulative toxins.”

The study examined 39 different PFAS, “including 9 current use compounds,” and “found that 50 out of 50 women tested positive for PFAS, with levels ranging from 52 parts per trillion (ppt) to more than 500 ppt,” according to an SCHF release.

Hitchcock said those findings provide further support for broad restrictions on uses of PFAS as a class of chemicals -- an approach SCHF and its allies have long supported but which has drawn a mixed response from regulators. Some states are backing the idea but EPA has so far resisted it, including recent remarks from an agency scientist who called the idea a “sticky question” and potentially not “defensible.”

Yet SCHF says the study shows replacing the “short-chain” PFAS that were the focus of early work on the chemicals with other perfluorinated substances, rather than avoiding the class altogether, is not reducing exposures.

For instance, Amina Salamova, a co-author of the study and associate research scientist at Indiana University, says in the release, “These findings make it clear that the switch to newer PFAS over the last decade didn’t solve the problem. . . . This study provides more evidence that current-use PFAS are building up in people. What this means is that we need to address the entire class of PFAS chemicals, not just legacy-use variations.”

And Hitchcock told Inside TSCA that the study shows any ban on PFAS uses should apply to “the full class of these forever chemicals, so that we're not adding to the exposure and are instead preventing exposures.”

Childhood Exposures

The May 13 report comes on the heels of a separate study conducted by California EPA, University of California Berkley and the University of California San Francisco's Program on Reproductive Health and the Environment (PRHE) of toxic chemicals in pregnant women and their babies in utero that identified more than 100 chemicals, including several PFAS and some unidentified “mystery” chemicals, in both sets of samples.

PRHE Director Tracey Woodruff said that project, which published on March 17, detected 109 unique chemicals in the blood samples, “including 55 chemicals never before reported in people and 42 ‘mystery chemicals,’ whose sources and uses are unknown.”

Hitchcock said that while the studies looked at different populations, they both help show how widespread PFAS exposure has become, and called PRHE's...

Medline, Sterigenics failed to report EtO emissions to EPA, report says

Nancy Crotti, Medical Design & Outsourcing

<https://www.medicaldesignandoutsourcing.com/medline-sterigenics-failed-to-report-eto-emissions-to-epa-report-says/>

Two companies that use ethylene oxide (EtO) to sterilize medical devices failed to report emissions of the toxic gas to the U.S. Environmental Protection Agency, according to a report by the Chicago Tribune.

Medline Industries and Sterigenics, both headquartered in Illinois, have also operated medtech sterilization operations in the state. Medline continues to do so, and Sterigenics decided in September 2019 not to reopen its EtO plant in Willowbrook, Ill., following a state-ordered closure in February of that year.

The EPA deemed the colorless, odorless gas a human carcinogen in 2016. It is used to sterilize millions of medical devices annually and is the subject of numerous lawsuits by people living or working near medtech sterilization plants. The Biden administration recently announced that it will propose new regulations for medical device sterilizers' emissions of EtO in 2022.

Medline and Sterigenics separately told Medical Design & Outsourcing that they are not required to report emissions to the EPA's Toxics Release Inventory (TRI), the database that the Tribune reviewed.

“The company reports emissions to relevant state authorities in accordance with the requirements under its permits,” a Sterigenics spokesperson told MDO in an email.

“Medline meets all US EPA and Illinois EPA reporting requirements and emission data associated with our Waukegan facility is disclosed to the public by US EPA,” Medline spokesperson Jesse Greenberg said in an email. “While we have not previously been required to file a Toxic Release Inventory (TRI) report, we are supportive of the US EPA's new requirement to include all EtO sterilization facilities in the TRI reporting requirements.”

Medline regularly reports emissions data to the Illinois EPA, Greenberg added. The company maintains that its recently upgraded EtO emissions controls can capture “more than 99 percent of all EtO used at our facility and that we are below our annual emissions cap, which in Illinois are the strongest regulations in the country,” Greenberg added.

“Medline's top priority has been and will continue to be the safety of our employees and our communities. We always have operated safely, transparently and within the requirements of our federal and state regulators, and we share the

mission to protect human health and the environment,” he said. “Medline will always follow all federal and state rules and regulations and continue to operate safely and within our legal responsibilities.”

Fifty percent or more of the people living in the same neighborhood as 14 of 22 U.S. ethylene oxide-emitting facilities contributing to cancer risks of at least 100 in 1 million are minorities or part of low-income households, according to the EPA’s environmental justice screening tool, EJSCREEN. Residents of three more neighborhoods with EtO-related facilities have an elevated cancer risk of 1,000 in 1 million or greater, the agency added. Medical device sterilizers make up 11 of these facilities, while the rest are industrial EtO sites.

EtO is used to sterilize about 50% of all devices sold in the U.S. that require sterilization — more than 20 billion medical devices per year, according to the FDA. It is a preferred sterilant for devices made from certain polymers (such as plastic or resin), metals, or glass, and devices that have multiple layers of packaging or hard-to-reach crevices because it has better penetration properties than other methods and is unlikely to damage products during the process.

EPA, others announce winners of PFAS elimination challenge

N/A, WaterWorld

<https://www.waterworld.com/environmental/press-release/14203422/epa-others-announce-winners-of-pfas-elimination-challenge>

WASHINGTON -- The U.S. Environmental Protection Agency (EPA) announced the winners of the Innovative Ways to Destroy PFAS (per- and polyfluoroalkyl substances) Challenge, a partnership between federal and state agencies focused on identifying ways to destroy PFAS in concentrated aqueous film forming foam (AFFF), a type of firefighting foam. This Challenge is part of the Agency’s efforts, including Administrator Regan’s new “EPA Council on PFAS,” to better understand and ultimately reduce the potential risks caused by these chemicals.

“The innovative technologies developed by the challenge winners will help reduce exposure to PFAS and reduce the impacts of these chemicals on the environment,” said Jennifer Orme-Zavaleta, Acting Assistant Administrator for EPA’s Office of Research and Development. “This challenge is the latest step EPA has taken to help address the effects of PFAS on human health and the environment.”

"DOD’s PFAS priorities are mitigating and eliminating the use of the current AFFF, and fulfilling our cleanup responsibility related to PFAS," said Mr. Paul Cramer, Acting Assistant Secretary of Defense for Sustainment. "Evaluating options for destroying AFFF is key to these efforts, and the results of this challenge are promising."

“The collective creativity and ingenuity of participants from diverse backgrounds is what makes challenges like this so successful. We hope rewarding the creators of these innovative concepts helps to make these technologies a reality so that federal, state, tribal, and local partners can safely destroy PFAS in firefighting foams," said Patrick McDonnell, President of the Environmental Council of States (ECOS) and Secretary of the Pennsylvania Department of Environmental Protection.

PFAS can be found at different concentrations in various waste streams; this challenge focused on unused AFFF because of its high concentration of PFAS and widespread use to fight fires. EPA and its partners sought technologies that showed the potential to destroy at least 99 percent of PFAS in unused AFFF – without creating harmful byproducts and using temperatures significantly lower than temperatures required for incineration. The challenge was intended to encourage the development of new approaches, technologies, or combinations of technology that had the potential to destroy PFAS.

Challenge winners include:

First Place (\$40,000 prize):

Dr. Brian Pinkard of Aquagga Inc., for a hydrothermal processing concept using high-temperature and high-pressure water to dispose of PFAS-contaminated waste onsite that may be potentially applicable for AFFF.

Second Place (\$10,000 prize each):

Dr. Denise Kay and Meng Wang of the Ramboll Group in Denmark and Dr. Cheng Gu of Nanjing University in China for their concept to use ultraviolet light and non-toxic additives to destroy PFAS.

Dr. Sarah (Xiao) Wu of the University of Idaho, for her concept using a continuous flow liquid-phase plasma discharge process to destroy PFAS in AFFF.

EPA collaborated on this challenge with the U.S. Department of Defense's Strategic Environmental Research and Development Program (SERDP) and Environmental Security Technology Certification Program (ESTCP); the Environmental Council of the States (ECOS) and the Environmental Research Institute of the States (ERIS); Michigan Department of Environment, Great Lakes & Energy (EGLE); and the Colorado Department of Public Health & Environment (CDPHE).

All submissions were evaluated by EPA scientists and key representatives from the Department of Defense. ECOS/ERIS, Michigan EGLE and CDPHE also had the opportunity to provide state-level insight for finalists.

Challenge winners will have the opportunity to submit their winning design concepts to DoD's SERDP/ESTCP programs for further testing.

Plaintiffs' Lawyer in Roundup Cases Shifts to Syngenta Herbicide

Sylvia Carignan, Bloomberg Law

<https://news.bloomberglaw.com/environment-and-energy/plaintiffs-lawyer-in-roundup-cases-shifts-to-syngenta-herbicide?access-ticket=eyJldHh0ljoiTkdVWRSIsImkljoiMDAwMDAxNzktMzNjMCIkYjZILWFjZmYtZjNjYzcyYmEwMDAxliwic2InIjoicUlhV3ZXNUQyNTBDeHZ5eVNHU3FvbVdPaGZzPSIsInRpbWUiOiIxNjIxMzI2NTU5IiwidXVpZCI6IklLV1ZrRzRlOGhzNXVQTkY4RGJGa2c9PTJscHBhckSYSWRFbjZrZjR4UlgzTkE9PSIsInYiOiIxIn0%3D>

Aimee Wagstaff, who was selected to serve as national co-lead counsel in litigation against Bayer AG's Roundup, is now taking on Syngenta AG and its herbicide, paraquat.

"I enjoy helping people battle the biggest corporations in the world. I enjoy the satisfaction in fighting the good fight," said Wagstaff, partner at Andrus Wagstaff PC in Lakewood, Colo.

Photo Courtesy of Aimee Wagstaff

Numerous complaints have been filed in federal district courts from California to Pennsylvania seeking damages for personal injuries from farmers' alleged paraquat exposure. The herbicide, used in crops like corn, soy, and cotton, is "highly toxic," according to a Syngenta fact sheet.

The U.S. Judicial Panel on Multidistrict Litigation will hold a hearing on whether to consolidate the paraquat cases May 27.

Like Roundup, which is a glyphosate-based herbicide, paraquat is a weedkiller. Though plaintiffs in the Roundup cases said the product caused cancer, the alleged injury common to all of the paraquat cases is the development of Parkinson's disease.

Paraquat has been used for decades, but legal complaints are being filed now in part because of the disease's late onset, Wagstaff said.

"Sometimes the link between exposure and injury takes a while to identify, and then you couple that time with a disease

that can sometimes take decades to present itself,” she said.

Leading Litigator

Andrus Wagstaff was one of the first law firms involved in the Roundup multidistrict litigation. Bayer, which acquired Monsanto, agreed to pay as much as \$11.6 billion to resolve about 125,000 Roundup lawsuits filed by U.S. consumers and farmers. Some of the money is slated for future claims.

“Monsanto fought us every step of the way. They didn’t concede any point at all,” Wagstaff said.

Wagstaff hadn’t been a plaintiffs’ attorney before she became a founding partner at the firm, but the work “fit my interests and my skill set completely,” she said. She was previously an associate working on corporate litigation for a large defense firm.

The majority of her work is focused on multidistrict litigation and Judicial Council Coordinated Proceedings. She has co-lead four national litigations so far, according to her firm.

In 2015, she became co-lead counsel of the first majority women multidistrict litigation plaintiffs’ steering committee. The cases were brought on behalf of women who had been diagnosed with permanent injuries, cancer, and other health issues allegedly caused by a medical device used during a hysterectomy or removal of fibroids.

Judge Kathryn H. Vratil, of the U.S. District Court for the District of Kansas, appointed Wagstaff.

“It paved the way for future courts to follow that path, which has happened a few times since,” Wagstaff said.

She hopes to one day take over the firm, keeping Andrus Wagstaff’s focus and staff.

“I have a very entrepreneurial spirit,” she said.

Syngenta Defends Paraquat

“Syngenta has great sympathy for the health issues faced by the Plaintiffs and others suffering from the debilitating effects of Parkinson’s disease. We care deeply about the health and well-being of farmers and are dedicated to providing them with safe and effective products,” Saswato Das, a spokesperson for the company, said in a statement.

“There is no credible evidence that Paraquat, which has been widely used for more than 55 years, causes Parkinson’s disease. No peer reviewed study, including the largest study which involved 38,000 farmers, has ever concluded Paraquat causes Parkinson’s disease,” he said.

The Environmental Protection Agency “and other government authorities have extensively analyzed this issue and similarly found no evidence that Paraquat causes Parkinson’s disease. The facts simply do not support the Plaintiffs’ allegations, and we intend to defend this product and our legal position vigorously in court,” Das said.

To contact the reporter on this story: Sylvia Carignan in Washington at scarignan@bloombergindustry.com

Key Court Hearing Wednesday in Bayer Cancer Liability Litigation

Carey Gillam, U.S. Right to Know

<https://usrtk.org/uncategorized/key-court-hearing-wednesday-in-bayer-cancer-liability-litigation/>

(UPDATED May 18 with pretrial order)

As Bayer AG works to put an end to costly litigation over alleged connections between Roundup herbicide and cancer, the company faces a critical hearing on Wednesday in federal court in San Francisco.

At issue in the hearing is a proposed \$2 billion class action settlement structured by Bayer in coordination with a small team of plaintiffs' lawyers as a means to address potential future lawsuits.

Proponents of the proposed class action plan say it "will save lives," and provide "speedy compensation" to people who get NHL.

But the plan has generated widespread opposition from law firms around the country who say the proposal actually does little for cancer patients while benefiting Bayer and the lawyers who structured the proposal and who will be paid millions of dollars in fees if the plan goes through.

The class action settlement would apply to people exposed to Roundup products as of Feb. 3, 2021 who have not yet sued Monsanto or retained a lawyer to do so. The settlement plan would set up a framework for addressing new claims brought by those exposed individuals who develop non-Hodgkin lymphoma (NHL) they attribute to their Roundup exposure.

The class action plan, which is separate from an \$11 billion settlement of Roundup litigation announced by Bayer last June to address already filed lawsuits, needs approval from U.S. District Judge Vince Chhabria. A prior class action settlement plan submitted last year was scorned by Chhabria and then withdrawn. The judge has been overseeing the federal multidistrict Roundup litigation involving thousands of plaintiffs from around the United States.

On Tuesday, Judge Chhabria issued a pretrial order stating that Wednesday's hearing "will focus on big-picture concerns" with the proposed settlement.

Bayer bought Monsanto in 2018 and has been struggling ever since to defend the line of glyphosate-based herbicide products such as Roundup that Bayer inherited in the acquisition. Cancer victims have won three trials held to date and tens of thousands of other plaintiffs have filed lawsuits alleging exposure to Monsanto's herbicides caused them to develop non-Hodgkin lymphoma while Monsanto spent decades hiding the risks.

A "Big Prize"

Likening the class action settlement proposal to a "carnival barker hawking a 'big prize,'" veteran consumer attorney Gerson Smoger told the court in a recent filing: "This is not merely an unfair deal. It is a deal designed to allow Monsanto to poison future generations. Monsanto knows it can only do this if it can put shackles on our system of justice. After four attempts, it should be clear that this proposed settlement cannot be remedied. This Court should deny preliminary approval and end this exercise in allowing a corporation to buy its own justice system."

Smoger is one of more than 160 lawyers from more than 90 law firms who have notified the court they object to the proposed class action settlement, which has been rewritten multiple times already to try to appease objections.

At the heart of the objections is the view that if approved, the class action plan could limit the due process rights of people to go to trial and seek punitive damages awards in the future if they are diagnosed with NHL after Roundup exposure, while allowing Bayer to keep selling Roundup products with no express warning of a cancer risk on the label.

The limiting of plaintiffs' ability to seek punitive damages while not limiting Bayer's ability to keep selling Roundup distinguishes this settlement from any similar class action, according to an opposition brief filed by the nonprofit legal group Public Justice. The plan is a "blueprint for how manufacturers can cut off victims' rights to seek punitive damages from injuries caused by hazardous pesticides, the group said.

"Importantly, there has never been a release of punitive damages in a class action settlement involving a hazardous product that was still on the market. If...

EPA Will Rescind Final Rule Establishing Administrative Procedures for Issuing Guidance Documents

Lynn Bergeson and Carla Hutton, Bergeson & Campbell Blogs

<http://www.tscablog.com/entry/epa-will-rescind-final-rule-establishing-administrative-procedures-for-issu>

The U.S. Environmental Protection Agency (EPA) is scheduled to publish a final rule on May 18, 2021, that will rescind the October 18, 2020, rulemaking that established procedures for issuing, modifying, withdrawing, and using guidance documents. According to the final rule, after consideration and review, “EPA has concluded that the internal rule on guidance deprives the EPA of necessary flexibility in determining when and how best to issue public guidance based on particular facts and circumstances, and unduly restricts the EPA's ability to provide timely guidance on which the public can confidently rely.” EPA states that it will continue to make Agency guidance available to the public at <https://www.epa.gov>. In addition, EPA will comply with all statutory obligations pertaining to posting documents for public accessibility. EPA will also continue its practice, as appropriate, of soliciting stakeholder input on guidance of significant stakeholder and public interest. EPA notes that consistent with the Administrative Procedure Act (APA), stakeholders may still petition EPA at any time regarding its regulatory programs, including requests to issue, amend, or repeal EPA guidance. The final rule will be effective when published in the Federal Register.

EPA Begins Environmental Justice Consultations on Risk Management Rulemakings for Trichloroethylene and Perchloroethylene

Lynn Bergeson and Carla Hutton, Bergeson & Campbell Blogs

<http://www.tscablog.com/entry/epa-begins-environmental-justice-consultations-on-risk-management-rule>

On May 18, 2021, the U.S. Environmental Protection Agency (EPA) invited environmental justice communities and stakeholders to participate in environmental justice consultations regarding the development of proposed risk management actions under Section 6(a) of the Toxic Substances Control Act (TSCA) to address unreasonable risks presented by trichloroethylene (TCE) and perchloroethylene (PCE). EPA will hold two identical consultation webinars, one on June 16, 2021, and the other on July 6, 2021. EPA states that both sessions will provide an overview of the TSCA risk management requirements, the findings from the final risk evaluations, the tools available to manage the unreasonable risks from TCE and PCE, and an opportunity for EPA to obtain input on environmental justice concerns. The consultations are open to the public, and EPA invites national, local, and non-governmental organizations, communities, and other interested stakeholders to participate. Comments are due August 20, 2021.

In addition to these environmental justice consultations, EPA states that it is executing a “robust outreach effort” that includes consultations with small businesses, state and local governments, and tribes. There will also be an open public comment period on proposed risk management regulations.

While outreach and stakeholder engagement on risk management activities for TCE and PCE will continue to move forward, EPA is actively reviewing final risk evaluations to ensure they use the best available science and protect human health and the environment, in accordance with Executive Orders and other direction provided by the Biden-Harris Administration. EPA states that it will keep stakeholders updated as it makes decisions and determines next steps. More information on EPA’s final risk evaluations for TCE is available in our November 24, 2020, memorandum and on EPA’s final risk evaluation for PCE in our December 17, 2020, memorandum.

A Breath of Fresh Air at the EPA, But Budget, Staff Need Boost

Michelle Roos and Jeremy Symons, Bloomberg Law

<https://news.bloomberglaw.com/environment-and-energy/a-breath-of-fresh-air-at-the-epa-but-budget-staff-need-boost?context=search&index=37>

President Biden has demonstrated a renewed commitment to the EPA with his appointment of Michael Regan as administrator and other highly qualified members of the leadership team, explain Environmental Protection Network’s

Michelle Roos and Jeremy Symons. But the hard work of rebuilding the agency's capacity after budget and staff cuts lies ahead, they say.

The health of Americans depends on a healthy Environmental Protection Agency to protect the air we breathe, the water we drink, and the communities in which we live.

Heading into 2021, the agency's capacity to fulfill these responsibilities was dangerously compromised. This led the Environmental Protection Network, a bipartisan network of almost 550 former EPA career employees and political appointees, to release a report with recommendations to reset the course of EPA to address the most significant and pervasive threats to public health and our environment.

It's time to take stock of the progress that has already been made, and what lies ahead, including the need to restore budget and staff resources that have been declining for years.

Critical First Steps Are Underway

The EPA has suffered too much damage for too long to be fixed overnight. Nevertheless, we can all breathe a little easier knowing that the agency is getting back to work. The Biden administration has acted swiftly and boldly to take critically important first steps across four major areas that will help the agency fulfill its mission of protecting public health and the environment.

First, the administration has appointed and nominated an exceptionally qualified and competent leadership team. The new appointees already have demonstrated a renewed commitment to transparency, stakeholder engagement, cooperation with Congress, and respect for the career staff that are the expert backbone of the agency.

Michael Regan was confirmed by a bipartisan and overwhelming Senate vote to be EPA administrator. He brings extensive state experience from his work in North Carolina, and has earned high marks already from staff for his engagement and transparency. Regan's April memo to EPA staff directed them, like great predecessors before him, to operate "in a fishbowl," working transparently and restoring public trust.

Second, the EPA has taken strong steps to restore scientific integrity at the agency. On March 31, Regan took decisive action to restore the integrity of the EPA's independent science advisory committees. And EPA's move to reinstall the agency's climate change website, previously removed by the Trump administration, and to provide public access to science-based climate change information, is a welcome departure from four years of politically imposed censorship.

Third, Regan has directed the agency to step up its work on environmental justice and better serve historically marginalized communities, including by boosting investment and strengthening enforcement of environmental violations.

"Too many communities whose residents are predominantly of color, Indigenous, or low-income continue to suffer from disproportionately high pollution levels and the resulting adverse health and environmental impacts," Regan said in a message to all agency staff. "We must do better. This will be one of my top priorities as Administrator, and I expect it to be one of yours as well."

Fourth, the EPA has acted decisively to restore its responsibilities to protect public health under the law. The EPA is moving swiftly but smartly to scale back Trump-era rollbacks, step up on climate change, accelerate action on PFAS forever chemicals, and take other steps focused on fulfilling the agency's mission to protect public health and the environment.

We are heartened to see that so much has been done in such a short time to restore "protection," EPA's middle name. The work, however, is far from done.

The Work Ahead: Historic Budget Request

One critical benchmark that looms large for the months ahead: Rebuilding the agency's...

I May Agree With This EPA On Most Issues, But I Still Don't Like Guidance

Seth Jaffe, Foley Hoag LLP

https://www.lawandenvironment.com/2021/05/13/i-may-agree-with-this-epa-on-most-issues-but-i-still-dont-like-guidance/?utm_source=Mondaq&utm_medium=syndication&utm_campaign=LinkedIn-integration

One of the results of the November election that makes me happiest is that I can now go back to being part of the loyal opposition. In other words, I know that the Administration and I share a common mission and common goals. We also often share common approaches to achieving those goals, but not always. And now, in the spirit of friendly cooperation, I know that I can sometimes disagree with the Biden administration on implementation of those goals without undermining my confidence that we are generally on the same page.

And so we come to EPA's announcement yesterday that it was rescinding the Trump EPA rule on promulgation of guidance. I bit my cheek hard when that rule was promulgated, stuck to my principles, and supported it – and I still do.

One line in EPA's promulgation particularly caught my eye, because it represents everything that I object to about the way large bureaucracies handle guidance:

EPA has concluded that the internal rule on guidance unduly restricts the EPA's ability to provide timely guidance on which the public can confidently rely.

The problem with this sentence is that the regulated community knows that it cannot ever confidently rely on EPA guidance. Guidance is the dictionary definition of a "heads I win, tails you lose" game. If the guidance would lead to a result that the agency likes, then it treats the guidance as regulation and requires the regulated community to comply. If not, then the guidance gets thrown out the window and EPA does what it damn well pleases.

I still think that my analogy of the bureaucratic use of guidance to Judge Roy Bean remains apt, and the discussion of guidance in *Appalachian Power v. EPA* remains the most cogent explanation of the problem with guidance.

I'm loyal to the current EPA, but I'm in the opposition on this one.

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And while you're reading.... Remember to shoot your coworkers a shooting star!

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